Supreme Court, U.S.
FILED

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No. _____

In The

Supreme Court of the United States

MORGAN BUILDINGS & SPAS, INC.,

Petitioner,

v.

BRIAN R. BECHT,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Louisiana

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a statute that imposes mandatory punitive damages without any requirement of bad faith or malice, without a heightened burden of proof, and without judicial review violates the Due Process Clause in a case where the punitive damages award is 215 times the actual damages?

CORPORATE DISCLOSURE STATEMENT

Petitioner Morgan Buildings and Spas, Inc., is a wholly-owned subsidiary of GHM Corporation, a privately held company. No publicly held company owns 10% or more of Petitioner's stock.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Morgan Buildings & Spas, Inc. ("Morgan") respectfully prays that a Writ of Certiorari issue to review the decision of the Supreme Court of Louisiana, entered in the above-entitled proceeding on April 23, 2003.

OPINIONS BELOW

The opinion of the Supreme Court of Louisiana is reported at 843 So. 2d 1109 and is reproduced in the Appendix to the Petition ("Pet. App.") at Pet. App. A. The opinion of the Louisiana Court of Appeals is published at 822 So. 2d 56 and is attached hereto at Pet. App. B. The judgment of the Louisiana trial court is unpublished and is reprinted at Pet. App. C.

JURISDICTION OF THIS COURT

The Louisiana Supreme Court entered the judgment below on April 23, 2003. This Court's certiorari jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF RULE 29(c) NOTIFICATION

The constitutionality of a Louisiana state statute is drawn into question by this Petition for Certiorari. The State of Louisiana, its agencies, officers and employees are not parties to this proceeding. Therefore, 28 U.S.C. § 2403(b) may apply and Petitioner has served a copy of

this petition on the Attorney General of the State of Louisiana.

STATUTORY PROVISIONS INVOLVED

This case implicates the Due Process guarantee of the Fourteenth Amendment to the United States Constitution. Also implicated are Louisiana Revised Statutes 23:631(A)(1)(b) and 23:632. La. Rev. Stat. § 23:631(A)(1)(b) creates liability for an employer who fails to timely pay wages owed to an employee after the employee leaves employment:

> Upon the resignation of any laborer or other employee of any kind whatever, it shall be the duty of the person employing such laborer or other employee to pay the amount then due under the terms of employment, whether the employment is by the hour, day, week, or month, on or before the next regular payday or no later than fifteen days following the date of resignation, whichever occurs first.

La. Rev. Stat. § 23:632 awards punitive damages for such a violation:

> Any employer who fails or refuses to comply with the provisions of La. Rev. Stat. § 23:631 shall be liable to the employee either for ninety days wages at the employee's daily rate of pay, or else for full wages from the time the employee's demand for payment is made until the employer shall pay or tender the amount of unpaid wages due to such employee, whichever is the lesser amount of penalty wages. Reasonable attorney fees shall be allowed the laborer or employee by

> the court which shall be taxed as costs to be paid by the employer, in the event a well-founded suit for any unpaid wages whatsoever be filed by the laborer or employee after three days shall have elapsed from the time of making the first demand following discharge or resignation.

Both Louisiana statutes are reproduced in full in the Appendix to the Petition.

STATEMENT OF THE CASE

The facts of this case are simple and are not in dispute. Morgan sells modular buildings, hot tubs, spas, gazebos and greenhouses. Brian R. Becht ("Becht") was employed by Morgan as a salesman and was paid on commission. Upon Becht's voluntary departure from the company, Morgan failed to pay Becht an outstanding commission of $41.15, through, at worst, ordinary negligence.

There is no evidence in the record that Morgan's failure to pay the $41.15 commission to Becht was motivated by bad faith, and the record instead reflects that in the wake of Becht's departure Morgan promptly paid him several other, substantially larger, commissions. Because Morgan neglected to pay the $41.15 commission to Becht within the limited time frame established by La. Rev. Stat. § 23:631, the punitive damage provision of La. Rev. Stat. § 23:632 automatically activated and required Morgan to pay Becht "90 days penalty wages." At Becht's stipulated daily rate of $99.04, the statutory punitive damages totaled $8,913.60, a figure that is 215 times the $41.15 owed to Becht. This sanction was imposed without any

regard to the underlying culpability of Morgan's conduct, the size of Becht's actual damages, or Morgan's financial status. Nor was there required any showing that Morgan had previously engaged in such wrongful conduct or was likely to do so in the future. The Louisiana courts have no statutory authority to alter the size of the automatic punitive damage award mandated by La. Rev. Stat. § 23:632.

Morgan explicitly raised the issue of the "grossly excessive" nature of the punitive damages award before the Louisiana Supreme Court, arguing that it violated the Due Process Clause of the Fourteenth Amendment. Morgan's third "Issue Presented for Review" before that Court was, "Whether an award of punitive damages 215 times the wages ultimately found to be due represents a grossly excessive award in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution. . . ." Respondent Becht argued that, under Louisiana state procedure, Morgan had waived this federal constitutional argument by failing to raise it in the trial court. Becht simultaneously argued that the punitive damages award was not constitutionally excessive. Thus, the federal issue was fully briefed at the state level by both sides.

The Louisiana Supreme Court chose to ignore Morgan's Due Process complaints, though without applying or relying on a procedural bar or waiver. *Becht v. Morgan Bldgs. & Spas, Inc.*, 843 So. 2d 1109 (La. 2003). Rather, the court held that in order to recover punitive damages under La. Rev. Stat. § 23:632, it is merely necessary to show that (1) wages were due; (2) demand for payment was made where the employee was customarily paid; and (3) the employer did not pay upon demand. *Id.* In other

words, merely because Morgan had stipulated that it owed Becht $41.15, the court thought it mandatory to apply punitive damages under Section 23:632. By treating the application of punitive damages as automatic, the Louisiana court impliedly, but necessarily, denied the existence of any Due Process Clause violation. Thus, in spite of the disparity between the punitive damages award and the amount of actual damages, the Louisiana Supreme Court evidently did not deem the award excessive.

REASONS FOR GRANTING THE WRIT

In recent terms, this Court has repeatedly recognized a substantive Due Process "outer limit" on jury awards of punitive damages.[1] Decades before, the Court explicitly acknowledged that Due Process similarly constrains awards of punitive damages made pursuant to statute. *See Waters-Pierce Oil Co. v. Texas (No. 1)*, 212 U.S. 86, 111 (1909) (acknowledging that a state statute may not impose fines "so grossly excessive as to amount to a deprivation of

[1] *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 123 S. Ct. 1513, 1520 (2003) ("While States possess discretion over the imposition of punitive damages, it is well established that there are procedural and substantive constitutional limitations on these awards.... To the extent an award is grossly excessive it furthers no legitimate purpose and constitutes an arbitrary deprivation of property."); *Cooper Indus., Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 434 (2001) ("The Due Process Clause of its own force also prohibits the States from imposing 'grossly excessive' punishments on tortfeasors."); *BMW of North Am., Inc. v. Gore*, 517 U.S. 559, 568 (1996) ("Only when an award can fairly be categorized as 'grossly excessive' in relation to these [State] interests does it enter the zone of arbitrariness that violates the Due Process Clause of the Fourteenth Amendment.").

property without Due Process of law."); *Southwestern Telegraph & Telephone Co. v. Danaher*, 238 U.S. 482, 491 (1915) (setting aside statutory penalty imposed on a telephone company on the grounds that it was so "plainly arbitrary and oppressive" as to violate the Due Process clause).[2]

Yet, in this case, the Supreme Court of Louisiana approved a statutory scheme that imposes punitive damages that can exceed actual damages by a factor of hundreds, even though there was no showing of culpability and no possibility of judicial scrutiny of the punitive damages award for reasonableness. Nor does the statute in question feature any heightened burden of proof; on a simple preponderance of the evidence showing a debt of $41.15 La. Rev. Stat. § 23:632 imposed 215 times that sum in punitive damages.[3] *BMW v. Gore* established a clear three-part test for evaluating the constitutionality of *jury-imposed* punitive damages, but it is not clear whether or how this test applies to *statutorily-imposed* punitive

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[2] *See also Browning-Ferris Indus. v. Kelco*, 492 U.S. 257, 276 (1989) (noting "[t]here is some authority in our opinions for the view that the Due Process Clause places outer limits on the size of a civil damages award made pursuant to a statutory scheme . . . ."); *St. Louis, I.M. & S. Ry. Co. v. Williams*, 251 U.S. 63, 66-67 (1919) (noting that the Fourteenth Amendment "places a limitation upon the power of the States to prescribe penalties for violations of their laws . . . where the penalty prescribed is so severe and oppressive as to be wholly disproportionate to the offense and obviously unreasonable."); *Seaboard Air Line R. Co. v. Seegers*, 207 U.S. 73, 78 (1907) ("We know there are limits beyond which penalties may not go. . . .").

[3] *See Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 21 n.11 (1991) (declining to require a heightened burden of proof for punitive damages where state law provided other significant procedural and substantive safeguards).

damages or other statutory civil penalties, because thus far this Court has explicitly applied the *BMW* "guideposts" only in the context of jury-determined punitive damages,[4] and the Court's early 20th-century cases recognizing the Due Process limit on statutory punitive damages do not announce any specific test for identifying "grossly excessive" statutory fines.[5]

Unsurprisingly, lower courts are confused on whether to apply the *BMW* analysis to statutory civil penalties or statutory punitive damages. *Compare San Huan New Materials High Tech, Inc. v. Int'l Trade Comm'n*, 161 F.3d 1347, 1363-64 (Fed. Cir. 1998) (affirming application of *BMW v. Gore* test to statutory civil penalty under 19 U.S.C. § 1337(f)); *Siddiqui v. United States*, 217 F. Supp. 2d 985, 991 (D. Ariz. 2002) (applying *BMW v. Gore* to claim involving statutory punitive damages under 26 U.S.C. § 7431); *United States v. Koch Indus., Inc.*, 57 F. Supp. 2d 1122, 1145 (N.D. Okla. 1999) (holding that if a civil penalty "statute, as interpreted and applied to a particular set of facts, produces an unconstitutionally excessive fine, the amount of the penalty can then be remitted to prevent an unconstitutional result"); *with Native Am. Arts, Inc. v. Bundy-Howard, Inc.*, 168 F. Supp. 2d 905, 914-15 (N.D. Ill. 2001) (holding that a "statutory damage provision" is not subject to the *BMW v. Gore* test).

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[4] *See BMW*, 517 U.S. at 575; *State Farm*, 123 S. Ct. at 1520; *Cooper Indus.*, 532 U.S. at 424.

[5] *See Danaher*, 238 U.S. at 491 (striking down a statutory fine on a phone company as "arbitrary and oppressive" without articulating a specific test for arbitrariness or oppressiveness).

Yet it seems clear that a grossly excessive award of punitive damages made pursuant to statute can offend the Due Process Clause as much as a similarly disproportioned award of punitive damages made by a jury.[6] The Louisiana statutes at issue yield absurd and troubling results in this case, magnifying $41.15 in actual ("compensatory") damages into $8,913.60 of punitive damages, in addition to attorney's fees. It is thus undeniable that Becht, like others before him,[7] reaped a dramatic windfall through La. Rev. Stat. § 23:632. It is disturbing enough that the punitive damages here are 215 times greater than the underlying actual damages. Worse, the imposition of

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[6] As the Second Circuit has noted, statutory damages in class action cases might reach "so far beyond the actual damages suffered that the statutory damages come to resemble punitive damages – yet ones that are awarded as a matter of strict liability, rather than for the egregious conduct typically necessary to support a punitive damages award." *Parker v. Time Warner Entm't Co., L.P.*, 331 F.3d 13, 26 (2d Cir. 2003).

[7] Multiple reported cases under La. Rev. Stat. § 23:632 reflect a substantial – in some instances radical – disparity between minor damages actually suffered and the substantial punitive award mandated by the statute. *See, e.g., Beard v. Summit Inst. of Pulmonary Med. & Rehab.*, 707 So. 2d 1233, 1238 (La. 1998) (awarding $432.00 in compensatory damages and $9,720.00 or 22.5 times that amount in statutory penalties); *Lysinger v. Sec. Indus. Ins. Co.*, 488 So. 2d 353, 354 (La. Ct. App. 1986) (awarding $78.92 in compensatory damages and $1,169.50 or nearly 15 times that amount in statutory penalties); *Powell v. Flotation Servs. Inc.*, 413 So. 2d 276, 278, 281 (La. Ct. App. 1982) (awarding $120.18 in compensatory damages and $9,000.00 or nearly 75 times that amount in statutory penalties). To the best of Petitioner's Counsel's ability to determine, Petitioner is the first to challenge the validity of this problematic statute on constitutional Due Process grounds. By way of contrast, this Court has noted that a punitive damages award four times greater than actual damages "may be close to the line of Constitutional permissibility." *TXO Prod. Corp. v. Alliance Res. Corp.*, 509 U.S. 443, 459 (1993).

such an excessive punitive damage award under La. Rev. Stat. § 23:632 was made with no showing of bad faith, willfulness or intent, without a heightened burden of proof, and without any meaningful opportunity to obtain state judicial review of the size of the penalty.

Thus, this case presents the Court with the opportunity to clarify how to determine when punitive damages that are automatically awarded pursuant to statute, rather than at the discretion of a jury, constitute a violation of the Due Process Clause.

1. Punitive Damages, Whether Assessed By A Jury Or Legislature, Are Penal In Nature And Must Therefore Be Subject To Close Scrutiny.

This Court has recognized that "punitive damages may properly be imposed to further a State's legitimate interests in punishing unlawful conduct and deterring its repetition."[8] Hence, punitive damages "serve the same purpose as criminal penalties."[9] Because "defendants subjected to punitive damages in civil cases have not been accorded the protections applicable in a criminal proceeding," this Court has repeatedly expressed "concerns over the imprecise manner in which punitive damages systems are administered."[10] Indeed, this Court has admonished that "punitive damages pose an acute danger of deprivation of property."[11] Nearly a century earlier, the Court

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[8] *BMW*, 517 U.S. at 568.

[9] *State Farm*, 123 S. Ct. at 1520.

[10] *Id.*

[11] *Id.* (citing *Honda Motor Co. v. Oberg*, 512 U.S. 415, 432 (1994)).

recognized that punitive civil penalties imposed by statute require Due Process scrutiny. *See Beard Air Line Railway v. Seegers*, 207 U.S. 73 (1907). Further, statutory punitive damages imposed without "recklessness" or "intentional wrongdoing" were found in 1915 to be unconstitutionally "arbitrary" and "oppressive." *Danaher*, 238 U.S. at 490.

The Court's well-founded "concerns" over punitive damages determined by juries culminated in the announcement of the three "guideposts" that must now be considered: (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual harm suffered by the plaintiff and the punitive damages award; and (3) the difference between punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.[12] The importance of these three guideposts is so high that this Court has mandated that appellate courts conduct *de novo* review of a trial court's application of them to the jury's punitive damage award.[13] Further, as part of an evident effort to restore order to the punitive damages award process, the Court has reiterated these guideposts three times in just six years.[14]

As this Court has recognized in decades past,[15] the danger of "arbitrary deprivation of property" stemming

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[12] *BMW*, 517 U.S. at 575; *State Farm*, 123 S. Ct. at 1520; *Cooper Indus.*, 532 U.S. at 424.

[13] *Cooper Indus.*, 532 U.S. at 424.

[14] *BMW*, 517 U.S. at 575; *State Farm*, 123 S. Ct. at 1520; *Cooper Indus.*, 532 U.S. at 424.

[15] *See* footnote 2, *supra*.

from statutory punitive damages is no less "acute" than in the context of jury-determined punitive damages. Both types of punitive damages are penal in nature; as this Court has recognized, "the remedy of civil penalties is similar to the remedy of punitive damages." *Tull v. United States*, 481 U.S. 412, 423 n.7 (1987). In neither instance is the defendant afforded the same procedural protections as in a criminal trial. Both types of punitive damages may, in any given case, be excessively and disproportionately larger than the actual damages, or for the penalty imposed to vastly exceed that in comparable cases. Indeed, *BMW v. Gore* implicitly recognized that jury-determined punitive damages are analytically similar to statutory punitive damages, notwithstanding the long-recognized Due Process limits on such awards.[16] Modern cases dealing with jury-determined punitive damages have regularly and favorably invoked cases from the early part of last century recognizing a constitutional cap on statutory punitive damages. *See, e.g.*, *BMW*, 517 U.S. at 575 (citing *Williams*, 251 U.S. at 66-67); *TXO*, 509 U.S. at 454 (citing *Waters-Pierce*, 212 U.S. at 111; *Danaher*, 238 U.S. at 491; and *Williams*, 251 U.S. at 66-67).

Despite the similarity between statutory punitive damages and their jury-determined cousins, the three critical guideposts announced in *BMW* and reiterated in *Cooper Industries* and *State Farm* have so far been applied by this Court only to jury-determined punitive awards. And while this Court's earlier jurisprudence undeniably acknowledged the existence of a Due Process limit to the

[16] *See BMW*, 517 U.S. at 601 (Scalia, J., dissenting) (expressing concern at the connection between jury and statutory awards).

size of statutory punitive damages, those older cases do not provide a formula for determining when that limit is reached. Thus, even as jury-determined punitive damages have been constitutionally reigned in, statutory punitive damages have remained unregulated and unreformed, thereby creating a substantial gap in this Court's punitive damage jurisprudence.

2. As Illustrated By Louisiana Revised Statute 23:632, Statutory Punitive Damages That Are Not Tailored To Actual Harm, That Do Not Correlate To Culpability Of Conduct, And Which Are Not Subject To Meaningful Judicial Review, Create Problems Identical To Those Stemming From Unlimited Jury-Determined Punitive Damages.

A statute that automatically awards a fixed amount of punitive damages without regard to culpability of conduct or the size of the actual damages is inherently arbitrary. This arbitrariness is compounded where, as here, the statute forecloses any judicial modification of the size of the punitive damages award.[17] Thus, the same Due

[17] Louisiana courts have recognized certain "equitable defenses" as a *total bar* to punitive damages under La. Rev. Stat. § 23:632. *See Landry v. Pauli's, Inc.*, 496 So. 2d 431, 434 (La. Ct. App. 1986) (collecting cases and finding that courts generally recognize an equitable defense in four common cases where: (1) there is a question regarding the number of hours worked; (2) the employer is entitled to offsets from the employee; (3) the employer made wage advances to the employee; (4) the employee allegedly retained property of the employer). *See also Carriere v. Pee Wee's Equipment Co.*, 364 So. 2d 555, 557 (La. 1978) ("A good-faith non-arbitrary defense to liability for unpaid wages, i.e., a reasonable basis for resisting liability, still permit[s] the court to excuse

(Continued on following page)

Process concerns that plague punitive damages awards made by juries also apply to statutory punitive damages: a statute that awards punitive damages using a formula utterly unrelated to actual damages may lead to results every bit as arbitrary as awards made by a "runaway" jury.[18]

The "grossly excessive" punitive damage award mandated in the instant case by La. Rev. Stat. § 23:632 is illustrative of the danger of permitting statutory punitive damages to remain without *BMW*-type guideposts. If the result in this case dictated by La. Rev. Stat. § 23:632 were to be examined using the *BMW* factors, it would badly fail on all counts.

A. Degree Of Reprehensibility.

BMW teaches that "the most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct."[19] This emphasis on culpability is equally important in a statutory context, as many statutes mandate double,

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the employer from the imposition of additional penalty wages."). Critically, however, even these "equitable defenses" do not vest the courts with the discretion to reduce or limit an award of punitive damages under La. Rev. Stat. § 23:632.

[18] By analogy, the Court's death penalty jurisprudence makes clear that excessive arbitrariness can result *both* where juries are given too *much* discretion, *see, e.g.*, *Buchanan v. Angelone*, 522 U.S. 269, 275-76 (1998) and where they are given too *little* (i.e., where the death penalty was imposed mandatorily), *see, e.g.*, *Woodson v. North Carolina*, 428 U.S. 280 (1976); *Roberts v. Louisiana*, 428 U.S. 325 (1976).

[19] *BMW*, 517 U.S. at 575.

treble or quadruple damages to punish willful or intentional bad conduct.[20] By contrast, the punitive damage provision of La. Rev. Stat. § 23:632 utterly fails to take into account the reprehensibility – or lack thereof – of the defendant's conduct. All conduct, from the merely negligent to the intentionally malicious, is treated identically by La. Rev. Stat. § 23:632, with punitive damages calculated using a single universal formula. Notably, there is no evidence in the record that Morgan's failure to pay Becht $41.15 promptly was anything other than ordinary negligence, yet Morgan now finds itself liable for the same amount of punitive damages ($8,913.60) as would an employer who had actively and maliciously plotted against Becht.

B. Disparity Between Actual Harm Suffered And Punitive Damages Awarded.

The second *BMW* guidepost evaluates the disparity between the size of the actual or potential harm suffered and the punitive damages awarded. This Court has recently noted that "in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages will, to a significant degree, satisfy due process."[21] "Single-digit multipliers are more likely to comport with Due Process, while still achieving the State's goals of deterrence and retribution, than awards with ratios in

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[20] *Id.* at 581 ("Some 65 different enactments during the period between 1275 and 1753 provided for double, treble, or quadruple damages.").

[21] *State Farm*, 123 S. Ct. at 1524

range of 500 to 1, or, in this case, of 145 to 1."[22] Indeed, this Court has previously indicated that a punitive damages award four times greater than actual damages "'may be close to the line' of Constitutional permissibility."[23] Thus, the 215 to 1 ratio imposed by La. Rev. Stat. § 23:632 in this case does not appear to comport with Due Process.

Worse still, La. Rev. Stat. § 23:632 does not even attempt to correlate the size of the punitive damages to the degree of actual harm suffered. The formula for calculating damages is based entirely on the former employee's *rate of pay*, not the amount of money that he is *actually owed*. This Court has noted that the "most commonly cited indicium of an unreasonable or excessive punitive damages award is its ratio to the actual harm inflicted on the plaintiff."[24] Because it does not link actual damages to punitive damages, La. Rev. Stat. § 23:632 permits absurd and arbitrary scenarios where a former employee who had a high daily rate of pay but was owed a trivial amount of money could receive greater punitive damages than an employee who was owed a large sum of money but had a low rate of pay. La. Rev. Stat. § 23:632's failure to make even a nominal effort to relate punitive damages to actual damages reveals the arbitrary nature of the statute.

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[22] *Id.*

[23] *TXO Prod. Corp. v. Alliance Res. Corp.*, 509 U.S. 443, 459 (1993) (citing *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 23 (1991)).

[24] *BMW*, 517 U.S. at 580-81 (also noting that "[t]he principle that exemplary damages must bear a 'reasonable relationship' to compensatory damages has a long pedigree.").

C. Civil Penalties Imposed In Comparable Cases.

The third *BMW* guidepost focuses on the disparity between a punitive damages award and "civil penalties authorized or imposed in comparable cases."[25] This Court has recently "referenced a long legislative history, dating back over 700 years and going forward to today, providing for sanctions of double, treble or quadruple damages to deter and punish."[26] Needless to say, nowhere in that legislative history are found statutes in which punitive damages are set hundreds of times higher than actual damages. In contrast, La. Rev. Stat. § 23:632 imposes a penalty radically harsher than even quasi-criminal statutes such as the Clayton Act[27] or RICO.[28] Stated simply, the excessive and arbitrary punitive damages mandated by La. Rev. Stat. § 23:632 are not consistent with those of past or present Anglo-American statutes. However, absent guidance from this Court, La. Rev. Stat. § 23:632 and other similarly arbitrary punitive damages statutes will be allowed to stand for lack of a standard by which to evaluate them.

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[25] *Id.* at 575.

[26] *State Farm*, 123 S. Ct. at 1524.

[27] 15 U.S.C. § 15.

[28] 18 U.S.C. § 1964.

D. Louisiana's Punitive Damage Scheme Is Devoid Of Meaningful Procedural Protection.

In addition to offering the guidance of the three the *BMW* factors, this Court has noted that "[j]udicial review of the size of punitive damages awards has been a safeguard against excessive verdicts for as long as punitive damages have been awarded." *Honda Motor Co. Ltd. v. Oberg*, 512 U.S. 415, 421 (1994). More explicitly, "denial of judicial review of the size of punitive damages awards violates the Due Process Clause of the Fourteenth Amendment." *Id.* at 432. Likewise, the Court has considered whether a heightened burden of proof should be required for punitive damages.[29] It declined to do so only because the punitive damages scheme at issue, unlike this one, included substantial procedural protections against arbitrary deprivations of property.[30]

By treating the imposition of punitive damages as automatic under La. Rev. Stat. § 23:632, the Louisiana Supreme Court confirmed what the statute itself already mandates; the punitive award is mandatory wherever a preponderance of the evidence shows an outstanding debt and Louisiana courts are without discretion to alter the size of a punitive damages award made pursuant to La. Rev. Stat. § 23:632. Punitive damages awarded under La. Rev. Stat. § 23:632 are calculated pursuant to the statute's inflexible formula, and neither the statute itself nor Louisiana case law indicates that the courts are free to

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[29] *Haslip*, 499 U.S. at 21 n.11.

[30] *Id.*

deviate from that formula.[31] As such, no meaningful judicial review of the size of punitive damages awards made under La. Rev. Stat. § 23:632 can take place.

Judicial review of punitive damages imposed by statute is no less critical than judicial review of jury-determined punitive damages. In both instances, judicial review of the amount awarded provides a key procedural safeguard against the arbitrary deprivation of property. The absence of that review only compounds the risk of arbitrary deprivation. Therefore, Petitioner prays that this Court will make it clear that *Oberg*'s requirement that judges review the size of punitive damages awards[32] applies equally in the context of statutory punitive damages.

CONCLUSION

The punitive damages dictated by La. Rev. Stat. § 23:632 in this case are "grossly excessive" in every sense of the term, as they vastly exceed actual damages, bear no relationship to Petitioner's real culpability, and are not subject to any meaningful state judicial review. Indeed, it

[31] As noted above, Louisiana case law does permit certain total "equitable defenses" to the imposition of punitive damages under La. Rev. Stat. § 23:632. However, these "equitable defenses" attempt to prevent the imposition of punitive damages altogether, and do not permit the court to reduce the size of the punitive damages award. In other words, these "equitable" defenses are an "all or nothing" proposition that do not increase the discretion of the court or allow it to tailor the award of punitive damages.

[32] *Oberg*, 512 U.S. at 432.

is hard to conceive of a more arbitrary formula for awarding punitive damages than that in La. Rev. Stat. § 23:632. However, no coherent legal standard presently exists for evaluating the excessiveness of statutory awards of punitive damages. Petitioner prays that the Court will draw on *BMW*, *Cooper Industries* and *State Farm* to craft a test to determine when a statutory award of punitive damages exceeds the boundaries of Due Process. By doing so this Court would close a serious potential "loophole" in its *BMW* jurisprudence and would prevent any attempt at a legislative "end run" around the constitutional limits on punitive damages that it has now repeatedly recognized.

Respectfully submitted,

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July 22, 2003

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BRIAN R. BECHT versus
MORGAN BUILDING & SPAS, INC.

No. 2002-C-2047

SUPREME COURT OF LOUISIANA

2002-2047 (La. 04/23/03);
843 So. 2d 1109; 2003 La. LEXIS 1115

April 23, 2003, Decided

PRIOR HISTORY:

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST CIRCUIT, PARISH OF EAST BATON ROUGE.

JUDGES:

KNOLL, Justice.

OPINION BY:

KNOLL

OPINION:

KNOLL, Justice

Louisiana Revised Statutes 23:631(A)(1)(b) imposes the duty upon an employer to pay any amount due under the terms of employment to an employee, upon his or her resignation, on or before the next regular payday or no later than fifteen days following the date of resignation, whichever occurs first. We granted this writ for the sole reason of evaluating the correctness of the court of appeal's finding that an extension of this statutorily imposed time period by an employment contract is contrary to public policy. However, after granting the writ we learned that prior to trial, the parties had entered into a stipulation of

facts which prevents us from reaching the issue for which we granted the writ. We find the court of appeal unnecessarily reached this legal issue because all of the elements necessary to establish a violation of La. R.S. 23:631 are present in the stipulation. Accordingly, we pretermit the issues raised in the court of appeal opinion and affirm, as the result is correct.

FACTS AND PROCEDURAL HISTORY

Plaintiff was employed by defendant on February 23, 1998, as a salesman of portable or modular buildings, portable spas, hot tubs, gazebos and greenhouses. In connection with his hiring, plaintiff signed a Standard Employment/Non-Competition Agreement which set out the terms of his employment. Pursuant to the agreement, plaintiff was employed on a full-time basis, earning straight commission. Upon termination, the agreement specified that a sales person who made a sale "will receive his or her 75% share of the Store's Commissions on those sales made prior to termination if the product has been DELIVERED, ACCEPTED, by the customer AND the account has been PAID IN FULL prior to the end of the last business day during which he or she was at work. The final commissions, if any, will be paid within forty-five (45) days of the end of the month during which the salesperson terminated."

On September 7, 1998, plaintiff voluntarily resigned from his sales position and, on October 7, he made a demand for unpaid wages. On November 23, 1998, 47 days past demand, plaintiff received a paycheck in the amount of $386.47 representing commissions arising from contracts on which plaintiff was identified as the salesman and

which had been delivered and completely funded on the date plaintiff left his employment. Nevertheless, on March 4, 1999, plaintiff brought suit alleging he had not been paid in full in accordance with La. R.S. 23:631 and sought penalties and attorney's fees pursuant to La. R.S. 23:632. Before trial in the city court of Baton Rouge, the parties submitted the case on briefs pursuant to a stipulation of facts entered into on May 8, 2000. In particular, the parties agreed to the following:

6.

On October 7, 1998, Becht made a demand for payment through Lee Pace, an employee of Morgan

* * * *

8.

Contract number 446736, in the name of Jeff Pollard, was delivered on August 27, 1998 and completely funded on August 24, 1998. Becht was identified as the salesman on this contract and has not been paid a commission on said contract. The commission due is $41.15.

* * * *

13.

For purposes of calculation of average daily wage, the parties have agreed to average Becht's wages over the course of his employment. Thus, Becht's average daily wage is $99.04.

On August 4, 2000, the trial court rendered judgment in favor of plaintiff. In its reasons for judgment, the court stated that under La. R.S. 23:632, plaintiff was entitled to 90 days penalty wages, totaling $8,913.60, based on the

neglect of defendant to pay plaintiff the commission of $41.15. The court further found La. R.S. 23:632 entitled plaintiff to $4,247.48 in attorney's fees.

On appeal, the First Circuit affirmed the trial court's award. In so doing, the court of appeal rejected defendant's argument that the matter was governed by the terms of the employment contract which provided "final commissions, if any, will be paid within forty-five (45) days of the end of the month during which the salesperson terminated," rather than La. R.S. 23:631, which strictly requires the payment of wages not later than fifteen days following discharge or resignation. The court found that the main purpose of La. R.S. 23:631 and 23:632 was to compel an employer to pay the earned wages of an employee promptly after his dismissal or resignation. Because the provisions were intended to protect the public interest, the court found that defendant could not rely on a contract term in direct violation of this well-established Louisiana law. Accordingly, the court of appeal held that penalty wages provided under La. R.S. 23:632 were properly awarded due to defendant's failure to pay plaintiff his earned wages within fifteen days of resignation.[1]

DISCUSSION

Louisiana Revised Statutes 23:631(A)(1)(b) creates liability for an employer who fails to timely pay wages owed to an employee after the employee voluntarily leaves employment:

---

[1] The court also awarded plaintiff an additional sum of $1000.00 in attorney's fees for the appeal.

> Upon the resignation of any laborer or other employee of any kind whatever, it shall be the duty of the person employing such laborer or other employee to pay the amount then due under the terms of employment, whether the employment is by the hour, day, week, or month, on or before the next regular payday or no later than fifteen days following the date of resignation, whichever occurs first.

In addition, La. R.S. 23:632 specifies that penalty wages and attorney's fees may be awarded for such a violation:

> Any employer who fails or refuses to comply with the provisions of R.S. 23:631 shall be liable to the employee either for ninety days wages at the employee's daily rate of pay, or else for full wages from the time the employee's demand for payment is made until the employer shall pay or tender the amount of unpaid wages due to such employee, whichever is the lesser amount of penalty wages. Reasonable attorney fees shall be allowed the laborer or employee by the court which shall be taxed as costs to be paid by the employer, in the event a well-founded suit for any unpaid wages whatsoever be filed by the laborer or employee after three days shall have elapsed from the time of making the first demand following discharge or resignation.

In order to recover penalty wages and attorney's fees under La. R.S. 23:632, the claimant must show that (1) wages were due and owing; (2) demand for payment was made where the employee was customarily paid; and (3) the employer did not pay upon demand. *Miller v. Heidi's Inc. of Baton Rouge,* 818 So. 2d 959, 963 (La.App. 1 Cir.2002); *Cleary v. LEC Unwired, L.L.C.,* 804 So. 2d 916, 923 (La. App. 1 Cir. 2001); *Harvey v. Bass Haven Resort,*

Inc., 758 So. 2d 264, 268 (La.App. 3 Cir. 2000); *Richard v. Vidrine Automotive Services, Inc.*, 729 So. 2d 1174, 1177 (La.App. 1 Cir. 1999); *Hebert v. Insurance Center, Inc.*, 706 So. 2d 1007, 1013 (La.App. 3 Cir. 1998); *Pokey v. Five L Investments, Inc.*, 681 So. 2d 489, 492 (La.App. 1 Cir. 1996).

Defendant asserts that, pursuant to the employment contract, it was not obligated to provide a final accounting of commissions until November 14, 1998 – 45 days from the end of the month plaintiff's employment was terminated. Defendant further claims that it did not receive a waybill documenting that contract 446736 had been delivered to the customer until November 19, 1998. As a result, defendant contends that plaintiff's demand for payment on October 7, 1998 was premature, and therefore, without effect.

Defendant's argument is without merit. Contrary to the court of appeal, however, we find that an analysis of the public policy implication arising from an employment contract which extends the deadline under La. R.S. 23:631 is unnecessary in this case. We instead find defendant's claims are forestalled by the clear terms of the stipulation of facts entered into by the parties on May 8, 2000. As this Court stated in *R.J. D'Hemecourt Petroleum, Inc. v. McNamara*, 444 So. 2d 600 (La. 1983):

> A stipulation has the effect of a judicial admission or confession, which binds all parties and the court. Stipulations between the parties in a specific case are binding on the trial court when not in derogation of law. Such agreements are the law of the case.

444 So. 2d at 601 (citations omitted). Accordingly, we note with significance that all of the elements necessary to establish a violation of La. R.S. 23:631 are sufficiently presented in the stipulation itself. Indeed, the stipulation clearly states that plaintiff "made a demand for payment through Lee Pace, an employee of [defendant]" on October 7, 1998. Furthermore, the stipulation reflects that all of the conditions entitling plaintiff to a commission under the employment contract, *i.e.*, delivery, acceptance, and payment by the customer, had been satisfied before plaintiff resigned from employment. Indeed, defendant concedes that plaintiff was still "due" $41.15 in commissions arising from a contract number 446736 as of the time of trial – over a year and a half after he resigned. Therefore, payment was not timely made under *either* the fifteen day period proscribed by La. R.S. 23:631 or the forty-five day period outlined in the employment contract.

Because we granted this writ solely to evaluate the court of appeal's holding regarding the extension of the La. R.S. 23:631 deadline, we pretermit defendant's remaining assignment of errors.

DECREE

For the foregoing reasons, the lower courts' awards of penalty wages and attorney's fees are affirmed.

AFFIRMED.

BRIAN R. BECHT VERSUS MORGAN BUILDINGS & SPAS, INC.

NUMBER 2001 CA 1091

COURT OF APPEAL OF LOUISIANA, FIRST CIRCUIT

2001 1091 (La.App. 1 Cir, 06/21/02);

822 So. 2d 56; 2002 La. App. LEXIS 2066

June 21, 2002, Rendered

PRIOR HISTORY:

Appealed from the City Court of Baton Rouge, Parish of East Baton Rouge, Louisiana. Trial Court Number 9903-02356. Honorable Byron Stringer, Judge.

COUNSEL:

Chad F. Reynolds, Baton Rouge, LA, attorney for Plaintiff-Appellee Brian R. Becht.

Murphy J. Foster, III, Jude C. Bursavich, John T. Andrishok, Baton Rouge, LA attorneys for Defendant-Appellant Morgan Buildings & Spas, Inc.

JUDGES:

BEFORE: WHIPPLE, FOGG, AND GUIDRY, JJ. Whipple, J. concurs in part & dissents in part, for reasons assigned.

OPINION BY:

FOGG

OPINION:

FOGG, J.

In this suit for unpaid wages, both the employer and the former employee appeal, asserting error in the trial court's award of penalties and attorney's fees. For the following reasons, we amend the judgment of the trial court and affirm, as amended.

On September 7, 1998, Brian R. Becht voluntarily resigned from his sales position with Morgan Buildings & Spas, Inc. Subsequently, Becht demanded his unpaid wages, Morgan failed to remit payment, and Becht filed suit. Morgan answered the suit, seeking attorney's fees pursuant to a contract of employment it had with Becht. The parties stipulated that $41.15 in commissions remained unpaid and submitted the matter. The trial court awarded Becht $8,913.80 in penalty wages and $4,247.48 in attorney's fees, in accordance with LSA-R.S. 23:631 et seq. Morgan appealed, and Becht answered the appeal.

Louisiana Revised Statute 23:631 imposes a duty on an employer, upon discharge or resignation of any employee, to pay the employee the amount then due, under the terms of the employment, not later than fifteen days following the date of discharge or resignation. An employer who fails or refuses to comply with the provisions of LSA-R.S. 23:631 shall be liable to the employee either for ninety days' wages at the employee's daily rate of pay, or full wages from the time of the employee's demand for payment until the employer tenders the amount of unpaid wages due to the employee, whichever is the lesser amount of penalty wages. LSA-R.S. 23:632.

This statute is penal in nature and, therefore, must be strictly construed. Equitable defenses are available, and penalty wages are not to be absolutely imposed. *Pace v. Parker Drilling Co. and Subsidiaries*, 382 So. 2d 988

(La.App. 1 Cir.), writ denied, 383 So. 2d 1016 (La. 1980). Generally, when there is a good faith question of whether the employer actually owes past due wages, resistance to payment will not trigger penalty wages. However, when the employer is arbitrary, sets out procedural pitfalls for the employee, or is merely negligent in failing to pay past due wages, penalty wages will be assessed. *Pace*, 382 So. 2d at 991. A trial court's findings of fact with regard to whether the plaintiff is entitled to penalty wages cannot be reversed on appeal in the absence of manifest error. *Loup v. Louisiana State Sch. for the Deaf*, 98-0329 (La.App. 1 Cir. 2/19/99), 729 So. 2d 689.

Initially, Morgan asserts that this matter is governed by the terms of an employment contract that provided "final commissions, if any, will be paid within forty-five (45) days of the end of the month during which the salesperson terminated," rather than LSA-R.S. 23:631, which strictly requires the payment of wages not later than fifteen days following discharge or resignation. We disagree.

Persons may not by their juridical acts derogate from laws enacted for the protection of the public interest. Any act in derogation of such laws is an absolute nullity. LSA-C.C. art. 7; *Morse v. J. Ray McDermott & Co., Inc.*, 344 So. 2d 1353 (La. 1976). The provisions of LSA-R.S. 23:631 and 632 are for the protection of employees. *See Guidry v. Anderson-Dunham, Inc.*, 597 So. 2d 1184 (La.App. 1 Cir. 1992). The main purpose of this legislation is to compel an employer to pay the earned wages of an employee promptly after his dismissal or resignation. *Wilson v. Inessa Stewart's Antiques, Inc.*, 96-2767 (La.App. 1 Cir 2/20/98), 708 So. 2d 1132, writ denied, 98-0777 (La. 5/8/98), 718 So. 2d 435. Even those employed under a

collective bargaining agreement are protected by these statutory provisions. LSA-R.S. 23:640. Clearly, prompt payment of wages to employees protects the public interest. Therefore, Morgan cannot rely on contract terms in direct violation of this well-established Louisiana law. *See Beard v. Summit Inst. for Pulmonary Med. and Rehab., Inc.*, 97-1784 (La. 3/4/98), 707 So. 2d 1233.

The failure to pay Becht his earned wages within fifteen days of resignation exposed Morgan to penalty wages pursuant to LSA-R.S. 23:632. Morgan has offered no evidence of a good faith defense. Therefore, the trial court's imposition of penalty wages was not manifestly erroneous.[1]

Morgan also asserts that the trial court erred in failing to award it attorney's fees as provided by the employment contract. It is undisputed that Becht and Morgan entered into an employment contract that provided:

> In the event the Employee in any manner defaults or breaches the terms and conditions of this Agreement, or threatens to do same, or in the event it becomes necessary for Morgan to employ an attorney to enforce any provision of this Agreement, obtain injunctive relief, or collect damages on account of a breach or a threatened breach of this Agreement, Employee shall pay to

[1] The submission of the case to the trial court on stipulations rather than live testimony does not alter the manifest error standard of review. *Alexander v. Pellerin Marble & Granite*, 93-1698 (La. 1/14/94), 630 So. 2d 706; *Virgil v. Am. Guarantee and Liab. Ins. Co.*, 507 So. 2d 825 (La. 1987).

> Morgan such disbursements as Morgan may expend in such proceedings.

Absent from the record is any evidence of "disbursements" by Morgan. Therefore, the trial court did not err in failing to award Morgan attorney's fees.

In his answer to the appeal, Becht seeks to increase the award to include commissions he allegedly earned prior to resignation, including the sum of $41.15 that remained unpaid according to the stipulation of the parties. The employment contract provided that upon termination, Becht was entitled to "the compensation earned by him prior to the date of termination computed in accordance with *Exhibit 'B'* [HOW SALES COMMISSIONS ARE PAID]." Section D of Exhibit B provided:

> [a] terminated sales person will not receive any percentage commissions on sales or deliveries made by the Store during the pay period in which the termination occurs. The terminated salesperson who made the sale will receive his or her 75% share of the Store's Commissions on those sales made prior to termination if the product has been DELIVERED, ACCEPTED, [sic] by the customer AND the account has been PAID IN FULL prior to the end of the last business day during which he or she was at work.

The record reveals Becht had ten sales wherein the product was not delivered or for which full payment was not received until after his resignation. Based on the terms of the employment contract, Morgan did not pay Becht commissions on these sales.

Becht asserts the provision limiting commissions to sales wherein the product was delivered, accepted by the

customer, and paid in full by the day of resignation constitutes a prohibited forfeiture of wages under LSA-R.S. 23:634. That legislation strictly forbids an employer from requiring an employee to forfeit his wages upon resignation and provides that the employee shall be entitled to the wages "actually earned" up to the time of their resignation.

When commission sales are at issue, the inquiry of whether a wage was actually earned focuses on what work associated with the sale remained at the time of resignation. *See Howser v. Carruth Mortgage Corp.*, 476 So. 2d 830 (La.App. 5 Cir. 1985). In the instant matter, considering the nature of the sales and the clearly-established method of determining compensation based on verifiable post-sale events, we find no error in the trial court's failure to award commissions on these contracts.

However, we do find error in the trial court's failure to include in the award the sum of $41.15, which pursuant to the parties' stipulation remained unpaid. Therefore, we will amend the trial court's judgment to include an additional award of $41.15.

Finally, Becht seeks additional attorney's fees on appeal, in accordance with LSA-R.S. 23:632. Additional attorney's fees are usually awarded when a party appeals, obtains no relief, and the appeal has necessitated additional work on the opposing party's counsel. *Loup*, 98-0329 at pp. 8-9, 729 So. 2d at 694. Accordingly, we award Becht the additional sum of $1,000.00 in attorney's fees on appeal.

For the foregoing reasons, the judgment of the trial court is amended to include additional awards in favor of Brian R. Becht in the sums of $41.15 in commissions plus

$1,000.00 in attorney's fees. In all other respects, the judgment is affirmed. Costs are assessed against Morgan Buildings & Spas, Inc.

AFFIRMED, AS AMENDED.

CONCUR BY:

Whipple (In Part)

DISSENT BY:

Whipple (In Part)

DISSENT:

Whipple, J. concurring in part and dissenting in part.

I agree with the majority in all respects except the denial of the remaining commissions claimed by plaintiff. I disagree with the trial court's (and the majority's) failure to make any award for the commissions generated by product sales made prior to, (but with delivery after) plaintiff's employment ceased. In my view, the enforcement of this contractual provision is *contra bonos mores*, and is statutorily prohibited. *See* LSA-R.S. 23:634. For these reasons, I respectfully dissent in part.

BRIAN R. BECHT	: SUIT NO. 9903-02356 DIV. A
VERSUS	: CITY COURT
MORGAN BUILDINGS & SPAS, INC.	: CITY OF BATON ROUGE : STATE OF LOUISIANA

JUDGMENT

This matter came before court on the 8th day of May, 2000, pursuant to an agreement by all parties to submit briefs on the legal issues. Brief submitted on behalf of plaintiff was by Chad Reynolds, Attorney, and for defendant by Tami Tucker York, Attorney.

After consideration of the evidence, the law and the argument of counsel,

IT IS ORDERED, ADJUDGED, AND DECREED that there be judgment herein in favor of the plaintiff, Brian R. Becht, and against the defendant, Morgan Buildings & Spas, Inc., in the amount of **EIGHT THOUSAND, NINE HUNDRED THIRTEEN AND 60/100 (8,913.60)**, together with legal interest thereon from the date of judicial demand until paid and all costs of these proceedings, as well as reasonable attorney's fees in the amount of **FOUR THOUSAND, TWO HUNDRED FORTY SEVEN AND 48/100 ($4,247.48)**.

JUDGMENT READ, RENDERED, AND SIGNED this 4th day of August, 2000, at Baton Rouge, Louisiana.

/s/ Byron Stringer
JUDGE BATON
ROUGE CITY COURT
Division A

FILED August 4 2000

(SIGNED) s/ Carolyn B. Ivy
SENIOR LEGAL
SPECIALIST OF
CITY COURT

A TRUE COPY August 7 2000

(SIGNED) Carolyn B. Ivy
SENIOR LEGAL
SPECIALIST OF
CITY COURT

U.S. Const.

Amendment XIV

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an

executive or judicial officer of any State to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

La. Rev. Stat. Ann.

CHAPTER 6. PAYMENT OF EMPLOYEES

§631. Discharge or resignation of employees; payment after termination of employment

A.(1)(a) Upon the discharge of any laborer or other employee of any kind whatever, it shall be the duty of the person employing such laborer or other employee to pay the amount then due under the terms of employment, whether the employment is by the hour, day, week, or month, on or before the next regular payday or no later than fifteen days following the date of discharge, whichever occurs first.

(b) Upon the resignation of any laborer or other employee of any kind whatever, it shall be the duty of the person employing such laborer or other employee to pay the amount then due under the terms of employment, whether the employment is by the hour, day, week, or month, on or before the next regular payday or no later than fifteen days following the date of resignation, whichever occurs first.

(2) Payment shall be made at the place and in the manner which has been customary during the employment, except that payment may be made via United States mail to the laborer or other employee, provided postage has been prepaid and the envelope properly addressed with the employee's or laborer's current address as shown in the employer's records. In the event payment is made by mail the employer shall be deemed to have made such payment when it is mailed. The timeliness of the mailing may be shown by an official United States postmark or

other official documentation from the United States Postal Service.

(3) The provisions of this Subsection shall not apply when there is a collective bargaining agreement between the employer and the laborer or other employee which provides otherwise.

B. In the event of a dispute as to the amount due under this Section, the employer shall pay the undisputed portion of the amount due as provided for in Subsection A of this Section. The employee shall have the right to file an action to enforce such a wage claim and proceed pursuant to Code of Civil Procedure Article 2592.

C. With respect to interstate common carriers by rail, a legal holiday shall not be considered in computing the fifteen-day period provided for in Subsection A of this Section.

D.(1) For purposes of this Section, vacation pay will be considered an amount then due only if, in accordance with the stated vacation policy of the person employing such laborer or other employee, both of the following apply:

(a) The laborer or other employee is deemed eligible for and has accrued the right to take vacation time with pay.

(b) The laborer or other employee has not taken or been compensated for the vacation time as of the date of the discharge or resignation.

(2) The provisions of this Subsection shall not be interpreted to allow the forfeiture of any vacation pay actually earned by an employee pursuant to the employer's policy.

Amended by Acts 1977, No. 317, § 1; Acts 1988, No. 602, § 1; Acts 1995, No. 325, § 1; Acts 1977, No. 56, § 1; Acts 2001, No. 1171, § 1.

La. Rev. Stat. Ann.

§632. Liability of employer for failure to pay; attorney fees

Any employer who fails or refuses to comply with the provisions of R.S. 23:631 shall be liable to the employee either for ninety days wages at the employee's daily rate of pay, or else for full wages from the time the employee's demand for payment is made until the employer shall pay or tender the amount of unpaid wages due to such employee, whichever is the lesser amount of penalty wages. Reasonable attorney fees shall be allowed the laborer or employee by the court which shall be taxed as costs to be paid by the employer, in the event a well-founded suit for any unpaid wages whatsoever be filed by the laborer or employee after three days shall have elapsed from time of making the first demand following discharge or resignation.

Amended by Acts 1964, No. 422, § 1; Acts 1977, No. 317, § 1.